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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

MORGAN STANLEY & CO., INC., et
al.,

Plaintiffs,

v.

SHRINERS HOSPITAL FOR
CHILDREN, et al.,

Defendants.

2:09-CV-398 JCM (PAL)

ORDER

Presently before the court is defendant interpleader the Estate of Maurits Jozef Van Praag's motion for reconsideration of the court's order (doc. #66) denying its motion for summary judgment. (Doc. #67). Interpleader defendant Joseph Surace filed an opposition to the motion to reconsider. (Doc. #71). Interpleader defendants Shriner Hospital for Children and Shriners Hospital for Children (Quebec), Inc. (hereinafter "Shriners Hospitals") filed a joinder to defendant interpleader Joseph Surace's opposition. (Doc. #75). The Estate of Maurits Jozef Van Praag filed a reply in support of its motion. (Doc. #77).

"Reconsideration is appropriate if the district court (1) is presented with newly discovered evidence, (2) committed clear error or the initial decision was manifestly unjust, or (3) if there is an intervening change in controlling law." *School Dist. No. 1J v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993); *see* Fed. R. Civ. P. 59(e); *see also* Fed. R. Civ. P. 60(b). In addition, error, mistake, inadvertence, surprise, or excusable neglect on the part of the parties may warrant reconsideration.

1 *see Associates Discount Corp. v. Goldman*, 524 F.2d 1051 (3rd Cir. 1975).

2 On September 10, 2010, the court held a hearing on the motion for summary judgment (doc.
3 #56). At the hearing, defendants Shriners Hospitals and Joseph Surace argued that the responses to
4 discovery were still incomplete, and that this precluded summary judgment. The Estate of Maurits
5 Jozef Van Praag asserted that the deposition testimony supported a granting of the motion for
6 summary judgment and that such relief was proper. However, since the deposition testimony
7 submitted to the court had not been properly authenticated under *Orr v. Bank of America NT & SA*,
8 285 F.3d 764 (9th Cir. 2002), the court denied the motion for summary judgment without prejudice.
9 (Doc. #66). The court indicated that the defendant should resubmit the motion with properly
10 authenticated evidence.

11 Subsequently, the Estate of Maurits Jozef Van Praag filed the present motion to reconsider
12 (doc. #67), and provided the court with properly authenticated evidence to support its motion for
13 summary judgment. (Doc. #67-1 thru #67-14 and doc. #76-1 thru #76-12). In addition, Shriners
14 Hospitals and Joseph Surace filed a motion to compel (doc. #68).

15 In the opposition (doc. #71) and the joinder in opposition (doc. #75) to reconsideration,
16 Joseph Surace and the Shriners Hospitals assert that summary judgment is not appropriate because
17 genuine issues of material facts surrounding the October 1999 TOD exist. Further, they assert that
18 issues relating to discovery responses raised in the motion to compel are legitimate and preclude
19 summary judgment.

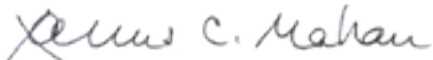
20 On December 14, 2010, Magistrate Judge Peggy A. Leen held a hearing on the motion to
21 compel, and granted said motion (doc. #79). In light of the granting of the motion to compel, this
22 court is not inclined to reconsider its denial of the motion for summary judgment (doc. #66) at this
23 time. As the parties are engaged in discovery and “genuine issues of material fact” remain
24 unresolved, summary judgment is not appropriate. *Celotex Corp.v. Catrett*, 477 U.S. 317, 323
25 (1986).

26 Accordingly,

27 . . .

1 IT IS HEREBY ORDERED ADJUDGED AND DECREED that defendant interpleader the
2 Estate of Maurits Jozef Van Praag's motion for reconsideration of its motion for summary judgment
3 (doc. #67) be, and the same hereby is DENIED without prejudice.

4 DATED January 24, 2011.

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7 UNITED STATES DISTRICT JUDGE
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